

### **REMARKS**

Reconsideration is respectfully requested in light of the foregoing amendment and remarks which follow.

Claims 1 and 4-32 are pending in the application. Claims 6-23 are withdrawn from further consideration pursuant Rule 142(b) by the Examiner as directed to a non-elected invention.

Claims 1, 4-5 and 28-32 have been amended. Claim 29 has been placed in independent form. Claims 1, 4-5 and 28-32 have been amended to indicate that the hydrophilic silica is fumed hydrophilic silica. See, for example page 5, first complete paragraph for literal support. Implied support exists through out the specification.

It is noted that 1) the drawings filed on September 7, 2004 were accepted, 2) the claim for priority is acknowledged and 3) the certified copies of the priority documents were received.

It is also noted that the outstanding rejections made in view of Wantabe and the obviousness type double patenting rejection were withdrawn.

Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse.

The point raised by the Examiner relative to "BET" is noted. Reconsideration is respectfully submitted. "BET" is a term well know in the art and would be understood by the artisan. It appears in numerous patents. See U.S. Patent No. 7,253,224 at col. 4 stating at line 64 and continuing to col. 5, line 4. BET designates refers to "Brunauer, Emmett, Teller". The BET method is described in ASTM C 819-77. A BET method of measuring surface area is describe in the Journal of the American Chemical Society, Vol. 60, page 304 (1930). See U.S. Patent No. 7,294,666 at col. 5, lines 41-42. If the Examiner still wishes Applicants will insert "Brunauer, Emmett, Teller (BET)" in the claims where appropriate.

Withdrawal of the rejection is respectfully requested.

Claims 29-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse.

Claim 29 has been amended to address the point raised by the Examiner in the Office Action. Claims 30 and 31 both further limit claim 29.

Withdrawal of the rejection is respectfully requested.

Claims 1, 4, 5, 24-28 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Henkel (WO 01/83662 A1). Applicants respectfully traverse.

For a reference to be anticipatory, it must teach each and every element required by the claims.

There is no mention in Henkel (reference is to the published U.S. application identified by the Examiner as being relied upon) of fumed or pyrogenically produced silica. The only silica mentioned in Henkel are sols (example) and sodium silicates (see paragraph Nos. 88 and 89).

The claims as amended identify the hydrophilic silica particles as fumed hydrophilic silica particles. This silica is distinct from that taught by Henkel. Accordingly, a claim element is not taught.

Accordingly, withdrawal of the rejection is respectfully requested.

Claims 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henkel (WO 01/83662 A1). Applicants respectfully traverse.

The deficiencies of Henkel are discussed above. Since the Henkel teaching is incomplete and since silica sols and sodium silicates are clearly distinct from fumed or pyrogenic

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Docket No.: 39509-205611

silica in properties and structure, the Henkel teaching is not suggestive of the invention as claimed.  
A prima facie case has not been established.

Withdrawal of the rejection is respectfully requested.

In view of the above amendment, applicant believes the pending application is in  
condition for allowance. A notice to that effect is respectfully requested.

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Respectfully submitted,

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